

REMARKS

Claims 101-104 and 106-125 remain in the application for further prosecution. In response to the Office Action mailed October 16, 2008, please consider the following remarks rendered in **appeal brief format**. The Examiner is invited to telephone the undersigned if the below remarks do not result in allowance of the claims, to discuss whether any agreement can be reached with respect to the claims to expedite prosecution and to avoid an appeal.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the Assignee, WMS Gaming, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in an appeal of this matter.

3. STATUS OF THE CLAIMS

Claims 101-104 and 106-125 remain in the application. Claims 1-100 and 105 has been canceled previously.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the last amendment filed on July 14, 2008.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present inventive subject matter include, but are not limited to, methods and systems for wireless activation of game features. The claimed subject matter is as follows:

101. A method of operating a gaming terminal, comprising:

establishing a wireless transmission link with a portable data unit carried by an individual, the portable data unit storing information associated with the individual;

transmitting the information associated with the individual to the gaming terminal;

in response to the transmitting changing the operation of the gaming terminal to a first mode associated with the individual or a second mode associated with the individual depending upon at least one of (i) a distance between the portable data unit and the gaming terminal and (ii) a period of time for which the portable data unit is detected as being in the presence of the gaming terminal, the first mode being different from the second mode.

102. A method of operating a gaming machine, comprising:

detecting, via the gaming machine, the presence of a passerby proximate to the gaming machine, the passerby not playing the gaming machine, the detecting including establishing a wireless transmission link between a first wireless transceiver in the gaming machine and a second wireless transceiver disposed in a portable data unit carried by the passerby, the portable data unit including information for allowing an identity of the passerby to be determined;

in response to detecting the presence of the passerby by at least one of detecting the presence of the passerby within a first predetermined distance of the gaming machine or detecting the presence of the passerby for at least a first predetermined period of time, operating the gaming machine in a first mode associated with the passerby; and

in response to detecting the presence of the passerby by at least one of detecting the presence of the passerby within a second predetermined distance of the gaming machine or detecting the presence of the passerby for at least a second predetermined period of time, operating the gaming machine in a second mode associated with the passerby, the second mode being different from the first mode, the second predetermined distance being different from the first predetermined distance, the second predetermined period of time being different from the first predetermined period of time.

112. A method of operating a gaming machine, comprising:

detecting, via the gaming machine, the presence of a first passerby by at least one of detecting the presence of the passerby within a first predetermined distance of the gaming machine or detecting the presence of the passerby for at least a first predetermined period of time, the passerby not interacting with the gaming machine;

in response to the detecting the presence of the first passerby, modifying the operation of the gaming machine according to an attract mode specific to the first passerby based on first information wirelessly communicated between the gaming machine and a first portable data unit carried by the first passerby;

detecting, via the gaming machine, the presence of a second passerby by at least one of detecting the presence of the passerby within a second predetermined distance of the gaming machine or detecting the presence of the passerby for at least a second predetermined period of time, the second predetermined distance being different from the first predetermined distance, the second predetermined period of time being different from the first predetermined period of time;

in response to the detecting the second passerby, modifying the operation of the gaming machine according to a play mode specific to the second passerby based on second information wirelessly communicated between the gaming machine and a second portable data unit carried by the second passerby.

120. A method of operating a gaming terminal, comprising:

in response to wirelessly detecting the presence of a passerby by at least one of detecting the presence of the passerby within a first predetermined distance of the gaming terminal or detecting the presence of the passerby for at least a first predetermined period of time, operating the gaming terminal in a first mode associated with the passerby such that the gaming terminal interacts with the passerby in a first manner; and

in response to wirelessly detecting the presence of the passerby by at least one of detecting the presence of the passerby within a second predetermined distance of the gaming terminal or detecting the presence of the passerby for at least a second predetermined period of time, operating the gaming terminal in a second mode associated with the passerby such that the gaming terminal interacts with the passerby in a second manner different from the first manner.

6. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

I. Claims 101-104, 106-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedrick et al. (US 6,908,387) in review of Rantze (US 6,536,658) as supported by Sizer et al. (US 5,923,252).

7. ARGUMENT

Claims 101-104, 106-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedrick (U.S. Pat. No. 6,908,387) in review of Rantze (U.S. Pat. No. 6,536,658) as supported by Sizer (U.S. Pat. No. 5,923,252).

A The Deficiencies Of The Prior Art

Applicant respectfully submits that the Office Action has impermissibly combined three disparate references. Hedrick is from the gaming field but fails to disclose critical inventive features. Ratze and Sizer are references drawn from the unrelated retail merchandizing fields which do not allow any information exchange between a customer and the respective machines for the purpose of effecting machine operation associated with the individual.

Hedrick discloses a player tracking unit that may be attached to a gaming display. The player tracking unit may include a wireless interface device to allow player tracking information to be downloaded from a portable wireless device as an alternative to requiring a player to swipe a player ID card to obtain such information. Thus, Hedrick is directed toward obtaining information specific to a player for gaming operations. The Office Action has conceded that Hedrick does not disclose an attract mode occurring in response to detecting a portable data unit

carried by a user within a first predetermined distance or time. (p. 4). The Office Action also concedes that Hedrick does not disclose changing the mode of the machine on detecting the portable data unit within a second predetermined distance or time. (p. 4).

The Office Action has asserted that operating a device in different modes is well known in the art by citing Rantze. Rantze relates to a sales kiosk that uses a proximity sensor to sense the distance of a person to the kiosk. (Abstract). However, Rantze is a retail system and does not fall in the wagering game arts as Hedrick or the present claims. Further, Rantze discloses an imprecise detection mechanism that is incapable of identifying a person with certainty let alone the identity of such a person. Rantze functions by transmitting waveforms of different frequencies that reflect from objects around the kiosk (assumed to be people). (Col. 10, l. 36 to Col. 11, l. 48, Fig. 3). The returned waveforms are received by a detector and compared with a series of threshold amplitudes to determine the distance of an object. (Col. 11, ll. 28-42). Since Rantze relies only on returned waveforms, it cannot guarantee that the detected object is a person. The object may be inanimate such as another sales kiosk or in the case of a casino, a gaming machine. More importantly, Rantze's method cannot determine the identity of a person and therefore adjust the mode of the kiosk in a manner associated with the person according to information transmitted from the object.

The Sizer reference is similar to Rantze as Sizer discloses a marketing system where different messages may be provided depending on the detection of the proximity of an object, presumably a person. Specifically, Sizer discloses detection via ultra-sonic sensor 2 in Fig. 1 which sends out ultra-sonic waves to detect the presence of a person and a determination means 3 determines the presence of a person based on the data. (Col. 10, ll. 44-57). Thus, Sizer

discloses the same type of detection mechanisms relied upon by Rantze that does not exchange information. The Office Action has noted that other forms of detection mechanisms may be used other than ultra-sonic waves, but such method such as infra-red beams are still passive in so far as they are do not exchange information and are one way at best in terms of obtaining information but no data is exchanged in the detection and ranging operations in either Sizer or Rantze.

B. The Wireless Communication System Hedrick Cannot Be Combined With the Passive Detection Systems In Rantze or Sizer

Applicant respectfully submits that one of ordinary skill in the art would not combine Rantze with Hedrick regardless of a teaching of alternate forms of detection as outlined in Rantze in combination with Sizer. As explained above, Hedrick discloses the use of a wireless identification device that is a substitute for a player ID card for the purpose of sending player tracking information to the player tracking unit. There is no suggestion or motivation in Hedrick relating to the distance of a passerby with regard to gaming machine function tailored to an individual player. The present claims relate to a totally wireless solution that solves the problem of players being annoyed by having to insert their ID cards to activate individual player specific features on a machine. By a two way wireless communication link that also triggers different modes depending on the detection of the holder of the wireless personal data unit, the machine operation may be tailored to a specific player. In contrast, Rantze relies on motion detection via reflected waves which is not communication and is essentially one way. Rantze cannot even insure that a person is in proximity from the kiosk. The substitution of other forms of detection such as ultra-sonic or infra-red beams as disclosed in Selzer are simply additional forms of the

fundamentally different motion detection function in Rantze that do not allow active communication between a portable device and the gaming machine.

The combination of Hedrick and the detection systems in Rantze/Sizer would not be contemplated by one of ordinary skill in the art. As noted above, the communication in Hedrick includes an exchange of information and thus, one of ordinary skill would not look to passive systems that do not exchange information such as Rantze or Sizer which rely on a passive, motion detection system.

1. The Inability To Combine References Physically Should Be Factored In A Lack Of Suggestion to Combine to One of Ordinary Skill In the Art.

One of ordinary skill would not combine different detection schemes in Hedrick and Rantze/Sizer together as the capabilities for each are not compatible. As explained above, a simple proximity system would not be sufficient to accomplish the purpose of Hedrick, namely obtaining information from a communication from a customer. There would be no motivation or suggestion to apply the feature of proximity detection in Rantze/Sizer to Hedrick as Hedrick is simply directed toward establishing communications with the portable unit for exchanging information with the portable unit.

The Office Action has asserted that MPEP 2145 (III) notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure, rather "the test is what the combined teaching of those references would have suggested to those of ordinary skill in the art." (p. 4). The Office Action misinterprets Applicant's arguments. Applicant has noted that since Rantze/Sizer and Hedrick differ in respective operations and purposes, one of ordinary skill would not have inferred the claims by the combined teachings of

the references. The Office Action has asserted that one of ordinary skill in the art would modify Hedrick's detection system and incorporate Rantze's method of operating a device at different modes because Hedrick and Rantze are both directed to a detection system to operate a device. (p. 4). However, the specific purposes of each detection system must be factored in the determination of what whether one detection system should be substituted for another. In this case, Rantze's detection system is essentially one-way detection while Hedrick is not a detection or proximity system, it is actually a communication system. One of ordinary skill would not substitute Rantze or Sizer's types of detectors in Hedrick because Hedrick requires communication and the substitution of Rantze would render the other functions of Hedrick inoperable as the detectors in Rantze or Sizer could not exchange communication of information with the wireless device carried by a player. MPEP 2145 (III) specifically prohibits this type of combination stating "however, the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose." The suggested substitution would render Hedrick inoperable for the purpose of communication with the player wireless device.

2. The Differences Between the "Services" In Rantze and The Gaming Machines in Hedrick Would Be A Factor Against Combining The References

A second reason why one of ordinary skill would not combine Rantze with Hedrick is the difference between simple retail sales environment with isolated kiosks to distribute marketing information to any person in proximity as in Rantze or Sizer and the gaming machine environment in Hedrick that caters to individual game players who may place wagers and operate the gaming machines. Rantze and Sizer are directed toward distributing marketing

messages that are directed toward all persons within proximity of the kiosk in a retail environment. The motion detection methods of Rantze or Sizer would not function in a gaming machine environment (e.g., casino) which has numerous machines and individuals all in close proximity with each other and is not a retail environment. The detection mechanisms that rely on the receipt of bounced waves from objects would not be able to isolate specific players, a feature which is desired by casinos for gaming machine such as the Hedrick system. The kiosk which is standalone in a retail environment will broadcast the same message to any potential customer thus not requiring specific customer identification. The dense placement of other large inanimate objects (gaming machines) in fixed proximity to the kiosk would make the proximity detection in Rantze and Sizer unworkable. Also, there are multiple people in the area of a gaming machine in a casino which also would not be amenable to the detection systems in Rantze or Sizer. The use of passive detectors in such an environment would cause the possibility of confusion as to which objects/persons are actually detected and used to change the operating mode of the machine.

The Office Action asserts that a gaming machine is a device that provides service to a person and such "service" is the same as "service providing systems" in Rantze. (p. 7). The standard cited by the Office Action for whether the references are in the same field is whether they are "reasonably pertinent" to the particular problem. In this instance, the references are in different fields as Hedrick is not a service. A gaming machine requires a player to operate the machine and the change in machine operation of the claims in the casino is premised on a player placing a wager and operating the gaming machine. There must be an exchange of communications to authorize the gaming machine in Hedrick. In contrast, the service in Rantze

and Sizer is simply marketing messages that are issued regardless of any information from the potential customers. Further, the machine operations are not geared toward attracting the customers to operate the machines. The fields of marketing and casino game information gathering are not reasonably pertinent to each other and the combination is therefore incorrect.

C. The Combination of Hedrick, Rantze and Selzer Does Not Anticipate The Element Of “Modifying The Operation of the Machine” Based on The Individual In Claims 101, 102

Even if one were to allow the combination of Hedrick, Rantze and Selzer, such a combination would not anticipate the element of modifying the operation of the machine associated with the passerby or individual. For example, claim 101 requires “changing the operation of the gaming terminal to a first mode associated with the individual or a second mode associated with the individual.” Similarly, claim 102, 112 and 120 requires a first and second mode associated with the passerby. The proximity sensing of Rantze or Sizer would only supply the distance of certain objects. The combination of Rantze and Sizer and Hedrick’s wireless communication would not have any correlation with the wireless communication since Rantze and Sizer relate to generic marketing messages and offering general information directed to all persons. The combination of these references would not teach associating the operation with the passerby or individual because there are many individual preferences and individual information could not be determined via the distance from the proximity detectors in Rantze and Sizer combined with the actual gaming machine operation of Hedrick.

Conclusion

It is the Applicant's belief that all of the pending claims are in condition for allowance and action towards that end is respectfully requested.

If any matters may be resolved or clarified through a telephone interview, the Examiner is respectfully requested to contact the Applicant's undersigned attorney at the number shown.

Respectfully submitted,

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